

DOCKET NO.: X10-UWY-CV-16-6033559-S : SUPERIOR COURT
PERSONNA NOBLE, ET AL. : J.D. OF WATERBURY
V. : AT WATERBURY
NORTHLAND INVESTMENT CORP., ET AL. : FEBRUARY 14, 2018

MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

This case concerns the mismanagement of the Church Street South housing complex in New Haven that has resulted in the relocation of virtually the entire low-income community of families who lived in its 301 apartments.¹ The named plaintiffs, five families who lived in uninhabitable apartments and were relocated from the complex, seek, for themselves and all those similarly situated, compensatory damages for (1) physical injuries, illness, and emotional distress caused by the conditions in Church Street South, by the destruction of their neighborhood and community, and by their dislocation from their apartments and relocation into hotel rooms, typically one room for a family; (2) “the diminution of the rental value” of their apartments “occasioned by the defendants’ wrongful conduct,” *Conaway v. Prestia*, 191 Conn. 484, 495 (1983); (3) property loss caused by the unlawful condition of their apartments; (4) costs, losses, discomfort, and annoyance inflicted during the relocation process; (5) attorneys’ fees pursuant to CUTPA (Conn. Gen. Stat. § 42–110b *et. seq.*), Conn. Gen. Stat. § 42-150bb, and the common law; and (6) common law and CUTPA punitive damages. Each of these claims will be most efficiently and equitably litigated as a class action.

The claims of the named plaintiffs, Personna Noble, Christina Foster, Yomaly Rivera, Luz DeJesus, and Rosa Rodriguez, and their families, and the class they seek to represent arise

¹ Three families remain to be moved. A site plan for the complex is attached as Exhibit A, and an aerial photo is attached as Exhibit B.

from a common course of conduct: the defendants' ownership and mismanagement of Church Street South. The claims arise from a common nucleus of operative facts: all of the named plaintiffs and class members are low-income families or individuals who signed identical leases, resided in the same complex, and have been or will soon be relocated as a result of pervasive conditions that affected all of the residents of Church Street South. The named plaintiffs further allege that the defendants' conduct affecting each class member arose from a common motivation, the desire of Northland Investment Corporation and its affiliated entities to demolish the complex and build upscale housing in its place.

Legal Standard

The legal standard for class certification is well-settled:

In determining whether to certify the class, a trial court is bound to take the substantive allegations of the complaint as true . . . it sometimes may be necessary for the court to probe behind the pleadings before coming to rest on the certification question. In determining the propriety of a class action, however the question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits but whether the requirements of the class action rules are met. Although no party has a right to proceed via the class action mechanism[,] doubts regarding the propriety of class certification should be resolved in favor of certification.

Town of New Hartford v. Connecticut Res. Recovery Auth., 291 Conn. 433, 471 (2009) (quoting *Artie's Auto Body, Inc. v. Hartford Fire Ins. Co.*, 287 Conn. 208, 212–15 (2008)) (internal quotation marks and citations omitted). *See also Rivera v. Veterans Memorial Medical Center*, 262 Conn. 730, 742 (2003) (collecting cases). Trial courts follow a “two step process”: determining first whether the four prerequisites of Practice Book § 9-7 are met, and second, whether the two requirements of Practice Book § 9-8 are satisfied. *Id.*

Class actions “serve a unique function in vindicating plaintiffs’ rights”:

Class action procedures increase efficiencies in civil litigation by encouraging multiple plaintiffs to join in one lawsuit. . . . Connecticut's class action procedures

are designed to prevent the proliferation of lawsuits, and duplicative efforts and expenses. Accordingly, we have noted that class actions serve four essential and distinct functions, specifically, to: (1) promote judicial economy and efficiency; (2) protect defendants from inconsistent obligations; (3) protect the interests of absentee parties; and (4) provide access to judicial relief for small claimants.

Rivera, 262 Conn. at 735 (citing and quoting *Grimes v. Housing Authority*, 242 Conn. 236, 244 (1997)) (citations omitted). “Without the backing of a comprehensive class, individual plaintiffs or their lawyers will find it difficult to muster the resources and incentives sufficient to tackle industrial giants . . . [because otherwise] [w]e will observe classic applications of the strategy of divide and conquer.” *Abron v. Black & Decker (U.S.) Inc.*, 654 F.2d 951, 973 (4th Cir. 1981). Class actions for damages, in particular, encompass “those cases in which a class action would achieve economies of time, effort, and expense, and promote uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results.” Newberg on Class Actions § 4:47 (5th ed.).

In passing CUTPA, the General Assembly chose to include an express class action remedy rather than rely on the class action provisions of the Practice Book and the common law. Conn. Gen. Stat. §§ 42-110g, 42-110h. For that reason, in this case alleging CUTPA violations, the provisions of the Practice Book concerning class action certification must be read in conjunction with CUTPA’s broad remedial purpose and the state’s public policy. *See, e.g., Hernandez, et al. v. Monterey Village Assocs. Ltd. P’ship*, 17 Conn. App. 421, 425-26 (1989) (the purpose of CUTPA is to encourage litigants to act as private attorneys general and bring actions for unfair or deceptive trade practices under CUTPA’s class action statute).

Statement of Facts

Plaintiffs rely on the facts in the exhibits to this Memorandum as well as the allegations of the complaint. Here is a summary.

Pervasive Building Problems

Systemic building, safety, and health code violations due to hazardous conditions persisted for years at Church Street South and demonstrate a common course of negligent, reckless, and unfair conduct by the defendants. There are numerous mutually corroborating sources of evidence of this conduct, which we now briefly describe.

The proposed class counsel (“counsel”) collected questionnaire data from 84 families who between them lived in all of Church Street South’s 22 residential buildings. The 84 families comprise 268 people in 106 apartments (some people moved within the complex) of the 301 apartments at Church Street South, including 12 apartments that at different times were lived in by two of the 84 families, so that data was collected on 118 apartment stays. Out of that 118, families reported mold in 93.2%, structural damage in 90.7%, water intrusion and/or leaks in 85.6%, plumbing or sewage backup in 82.2%, electrical or heating problems in 63.6%, and pest infestations (mice, rats, insects, and others) in 69.5%.² All 22 buildings reportedly suffered from mold, water intrusion and/or leaks, structural damage, and plumbing/sewage backup.³ In all but one of the apartments surveyed, at least one type of failure was reported.⁴ Nearly all of these

² The questionnaire summary spreadsheet used to compile reported apartment conditions and health effects, as well as the questionnaires themselves (in redacted form to anonymize confidential health information), are attached as Exhibit C.

³ Pests and electrical and/or heating problems were not reported in either of the two apartments located in Building #5 that were included in the survey; no electrical and/or heating problems were reported in 5A Malcolm Court, the only apartment located in Building #18 that was included in the survey.

⁴ Even that apartment, 7C Cinque Green, was cited for nine separate local or federal code violations in 2015, although it may have looked good in comparison with the apartment the class member and her daughter were moved out of, 5C Station Court, which was cited for 25 combined local and federal code violations in 2015. *See* attached Exhibit E listing violations at those two apartments in 2015.

failures were reported to have been brought to the attention of the defendants by the tenants over a period of years but never resolved.

Government data corroborate the families' reports. Inspections of various subsets of the apartments were conducted by the U.S. Department of Housing and Urban Development (HUD) and the City of New Haven's Livable Cities Initiative (LCI) from 2008 to 2017.⁵ While most of these inspections involved a small sample of apartments, a complex-wide inspection was conducted by HUD in 2015. Plaintiff's expert industrial hygienist Robert Klein has analyzed the data from the HUD inspections. His report is attached as Exhibit F. In the complex-wide inspection, he found, "HUD identified over 2,300 deficiencies across 282 dwelling units, common building areas, and the complex office building." Klein Report, Ex. F at 3. Many of the failures documented during the 2015 inspection had been present two years earlier, when a sample of the units was inspected:

As one example, of the approximately 47 units identified with various and often multiple mold/mildew/water damage deficiencies during HUD and LCI inspections in early 2013, 28 (60%) of those deficiencies were re-identified during complex-wide inspections more than two and a half years later in 2015.

Id. at 4. Mr. Klein concluded that "the persistence of water infiltration, water damages, mold, and mildew over months to years meant that residents were continuously exposed to these conditions for prolonged periods of time," a finding that is also consistent with the questionnaire data. *Id.*

Records of maintenance and repair work at Church Street South corroborate the government and family reports. Plaintiff's expert engineer James Parry reviewed the government inspection reports and records of repairs and maintenance provided by the defendants, as well as

⁵ A summary spreadsheet compiling building code violations observed by HUD and LCI from 2008 to 2017, sorted by building and then by unit, is attached as Exhibit D. There are a total of 4,427 code violations, an average of more than 5 violations per apartment per inspection.

photos and drawings documenting roof inspections at 10 buildings.⁶ Mr. Parry also visited 22 apartments in 14 buildings during a visit to the site in April 2017, and reviewed thousands of photos taken during his visit and during plaintiffs' comprehensive photographic documentation of the Church Street South apartments in May and June.⁷ His report is attached as Exhibit H. Based on his personal observations and review of the information provided, Mr. Parry concluded that "all 22 of the[] buildings suffered from external water leaks and internal water leaks," allowing "significant quantities of water into the buildings over many years," made worse by the fact that "the maintenance staff fixing the leaks never once reported the use of drying equipment" before repairs were made, causing the moisture to be trapped within the buildings. Ex. H at 13-14.

Mr. Parry's report documents a complex-wide failure to prevent leaks; leaks that persisted for years; and inadequate remediation to prevent exposure to indoor dampness, water damage, mold, and mildew if and when leaks were eventually repaired. The report focuses on 12 buildings - the 10 buildings inspected by Mr. Darling, *see* n.6, *supra*, as well as buildings 1 and

⁶ Plaintiff's expert roofing consultant Bruce Darling conducted the roof inspections. He has visited Church Street South twice for roof inspections and is on the site for additional roof inspections today. When Mr. Darling has inspected all the roofs we will submit his full report, whatever it shows. In the meantime, we will send his interim reports of each visit to the defendants, as well as the photos and drawings that Mr. Parry relied on for his report.

Mr. Darling inspected five roofs each day: buildings 5, 9, 14, 15, and 20 on July 20, 2017 and buildings 7, 11, 13, 17, and 18 on January 24, 2018. Mr. Darling found that all ten roofs had water leaks, improper installation, and building code violations, and all but two roofs had evidence of "ponding" (water accumulating) on the roofs and moisture within internal layers of the roof identified by test cuts. Multiple deficiencies, improper installation techniques, building code violations, and areas prone to leaking were also typical. His report is attached as Exhibit G.

⁷ Approximately 4,800 photographs at 269 apartments were taken over 16 days by two photographers. Northland cooperated in making the apartments available for inspection, as it is doing for the roof inspections.

10.⁸ Noting the common age, common construction, and common dimensions of the buildings (identical widths, allowing for identical roofs and structural systems) and common maintenance and repair practices across the complex, Mr. Parry found typical unit problems in all of the buildings reviewed, including:

- “Ceiling and wall damage or repairs from water leakage. . . .”
- “Mold and mildew in every bathroom.”
- “Virtually every ceiling below the full bathroom had current water damage or past repairs.”
- “Mold and mildew in most kitchen cabinets. The sink cabinet was always impacted by past leakage.”
- “Where sheetrock was fallen or broken through, the back side was most often impacted by mold and mildew.”
- “Window sills and framing were rotten or rotting at many windows.”
- “Floor tile not adhered in bathrooms, kitchens, laundry closets, hot water boiler closets and hallways. Water leakage impacted the floor tile adhesive.”
- “Bathroom fan vents were partially plugged and fans were often not working properly.”
- “Evidence of roof drainage not functioning properly. Water running down the external walls and getting into window and door openings.”

⁸ “Twelve buildings were chosen for review because of the quantity of information and time constraints to complete a total review.” Ex. H at 7. Mr. Parry reports that “[s]ince all of the 22 buildings were constructed in 1969 and 1970 with similar if not identical materials, construction methods and maintenance practices, they will generally all have very similar problems as the buildings age. The conditions of the 12 buildings with a detailed review represent over 50% of the units in the complex and give an accurate representation of all the buildings in the complex.” *Id.* at 7-8.

Parry Report Ex. H at 5. A particularly critical common issue was roof leaks. As Mr. Parry explains:

Roof leaks are a common problem cited in the work orders with water entering through the tops of window and door frames, and with bulging or collapsing ceilings. The impetus for roof repair work appears to be repetitively driven by internal leakage rather than a proactive inspection and maintenance program for these 22 buildings.

Id. at 8.⁹ Mr. Parry observed a pattern of years going by before work was performed on roofs “that should be performed either once or twice a year.” *Id.* Additionally, there was no evidence of annual inspections and routine maintenance, which “should have been done proactively with roofs of this age and history.” *Id.* at 8-9.

Another common issue was leaks of long duration. As Mr. Parry notes, leaks that persist for a long time are “extremely important because of the resultant accumulation of water in the walls, floors and ceilings of the units.” *Id.* at 9. Mr. Parry’s report documents many leaks in buildings that went unaddressed for months at a time, providing a “massive opportunity for a large volume of water to enter the building with each rain event.” *Id.* The persistence of leaks in several buildings showed “a consistent theme of roofing repair work that occurs several months after leakage reports.” *Id.* As Mr. Parry concludes:

[T]he general practice of waiting for problems to occur before going in to perform a repair is clear. This practice unfortunately allowed many leaks to persist before being detected. And after detection many leaks took months to actually solve. Unfortunately this practice allowed large amounts of water to enter and be stored in the buildings.

Ex. H at 10-11.

⁹ “For instance, after the initial roofing project in December of 2008, it was slightly over 2 years before [any roof] cleaning & repair work was performed on or about December 9, 2010. It is important to note that planned roofing maintenance in Connecticut is rarely done in December or January. It is therefore reasonable to assume that this work was triggered by roof leakage which triggered an emergency repair.” *Id.*

Analyzing the results of Mr. Darling's roof inspections, Mr. Parry noted "many roofing defects that are potential sources of leaks." *Id.* at 11. Most serious were "wet layers" found in test cuts taken from the roofs, found in eight out of the ten buildings. "Moisture trapped in the roof system deteriorates foamboard, reduces the value of insulation and creates an opportunity for mold and mildew to develop. Moisture in the roofing material also indicates that past and/or present leaks have occurred." *Id.* The roofs on all ten buildings showed evidence of ponding. "When ponding occurs, even small holes or seam separations can allow a significant amount of water to enter the building." *Id.* The roofs also had accumulation of debris, "which will completely prevent water in that area from draining off the roof." *Id.* And for all ten roofs:

The vent stack penetration is elevated about six inches above the roof with a curb. The metal cover over this penetration on all the buildings was in very bad shape. These were apparently never replaced with the roofing repair contracts. Leakage through tears, cuts and uncovered vents appear obvious from the photographs.

Id.

Mr. Parry also reviewed thousands of photographs, noting that they were particularly "useful to observe the presence of mold/mildew on the back side of sheetrock and rust on the steel studs or pipes," *id.* at 5, issues not discoverable by tenants while they are living at an apartment. Although the photographs were all taken after tenants had moved out of the apartments, Mr. Parry concluded that "ceilings, walls and windows appeared to be consistent with the conditions during occupancy." *Id.* at 12. Mr. Parry cataloged 160 photographs that document seven common defective and hazardous conditions and, in his professional opinion, "represent the conditions in all 22 buildings," *id.*, attached as Appendix B to his report, *id.* at 29-119.

Pervasive and Widespread Health Effects

The questionnaire survey contained information on 268 residents who lived at Church Street South, 98 adults and 170 children. Plaintiffs' expert pulmonologist Carrie Redlich, MD, MPH, a pulmonary physician, Director of the Yale Occupational and Environmental Medicine Program, and Professor of Medicine at Yale University School of Medicine, reviewed residents' responses to the questionnaires, the record of government inspection reports (HUD and LCI), and Mr. Klein's report. Based on the questionnaire responses, she found that "[t]he most common medical condition reported in the 170 children was physician-diagnosed asthma, present in 48%." Redlich Report at 2, attached as Exhibit I. "Other respiratory conditions (41%), skin problems (47%), and emotional distress (45%) were also commonly reported in the children." *Id.* Dr. Redlich also noted that "[i]mprovement in physician-diagnosed asthma and/or other respiratory condition[s] . . . was reported in 66%" of the children. *Id.*

Among the adults, almost all women (94%), "respiratory problems were also very commonly reported." *Id.* "Thirty-six (37%) reported physician-diagnosed asthma, 58% reported other respiratory problems, 33% reported allergies and 45% reported sinus problems. Emotional distress (85%), depression (73%), anxiety (70%) were also commonly reported." *Id.* Among the adults with physician-diagnosed asthma and/or other respiratory problems, Dr. Redlich noted that "all 66 (100%) reported onset or worsening of the problem(s) while at Church Street South and 49 of the 66 (74%) reported improvement after leaving Church Street South." *Id.*

Dr. Redlich concluded that the prevalence of asthma among former residents of Church Street South is "very high, even when taking into consideration various sources of bias (selection, reporting) and considering racial/ethnic and socioeconomic differences in asthma prevalence." Ex. I at 4. Dr. Redlich further concluded that other reported health conditions, such

as respiratory conditions, sinus problems, skin problems, anxiety and emotional problems are also “higher than would be expected.” *Id.* Taking into account the conditions of the apartments at Church Street South, as described by Mr. Klein and government inspection reports, Dr. Redlich concluded that the conditions “on a more probable than not basis, contributed to the markedly high prevalence of physician-reported asthma documented by the residents who lived at the Church Street South complex,” as well as the “other respiratory and health problems reported by the residents.” *Id.*

Dr. Redlich’s conclusions regarding the effects of the conditions at Church Street South were based on a number of considerations, including the “markedly high prevalence” of reported conditions, “an extensive medical literature on mold, dampness and other home factors,” and “commonality of both exposures and health problems.” *Id.* at 6. Additionally, Dr. Redlich noted “a clear temporal association between . . . asthma and other respiratory problems and living at Church Street South,” further supporting her conclusions. *Id.*

Dr. Redlich’s opinions and conclusions are paralleled by the report of Plaintiffs’ expert pulmonologist M. Saud Anwar, MD, MPH, FCCP, a pulmonary physician and Chairman of the Department of Internal Medicine at Eastern Connecticut Health Network, who reviewed the record of physical deficiencies noted by HUD, reports by residents, and the Klein report, and made personal observations of the complex during a site inspection in April 2017. Based on these data sources, Dr. Anwar concluded that “the indoor environment and the exposures of Church Street South residents are more likely than not the cause of the negative health impacts and illnesses of their upper airway, lower airways, including but not limited to the allergies, asthma and other irritant, mycotoxic and pathogenic manifestations.” Anwar Report at 3, attached as Exhibit J.

Northland's Knowledge

Defendant Northland Investment Corporation, using Defendant Church Street New Haven LLC (a single-member, single-asset entity) as an alter ego and/or instrumentality, bought Church Street South in 2008 for approximately \$5 million. At the time of acquisition and ever since, Northland's plan has been to demolish the complex to make way for the construction of upscale housing.

Northland knew even before it bought the property that Church Street South badly needed repairs to its structural elements, including the building envelope, roofing, windows and window frames, plumbing, heating and ventilation systems, bathroom and kitchen fixtures, electrical systems, means of egress, and exhausts.¹⁰ Northland was further aware, at least as early as 2008, of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But, as the documented widespread and severe problems at the complex all the way up to the present show, during the years that followed the purchase Northland never took the actions necessary to ensure that the apartments it was renting were clean, safe, and habitable in compliance with local, state, and federal law.

¹⁰ An appraisal commissioned by Northland while the property was being acquired reported that

[REDACTED]

The document is being filed under seal at the request of the Northland Defendants. The addenda to the appraisal are not included in what is being filed due to their length but can be provided if the Court requests.

¹¹ The document is being filed under seal at the request of the Northland Defendants.

A good and vivid summary of the facts is provided by Dolores Colon, from 2002 until the present the New Haven Alder in Ward 6, which includes Church Street South. Alder Colon's statement is attached as Exhibit T. She reports, among much else, that Church Street South became known as "Asthma Central," Exhibit T at 1, and continues:

Residents complained to me continually about toilets overflowing, sewage coming out of kitchen sinks and the same coming down into apartments from the apartments above their units due to faulty plumbing in the units above them. . . . Repairs, if completed, were superficial and not long lasting. The equivalent of "Handy Men," no licensed plumbers or electricians, were usually sent to make repairs. The Handy Men usually said that they had to go and get a certain tool or part, then would leave and not return. It was obvious that Northland did not want to make the financial decision to bring the buildings up to code. The root causes of the problems were that the roofs, plumbing and electrical systems had to be totally replace to be brought up to code. Interior mildew on interior walls was bleached, then painted over. But the sheetrock was never removed to get behind the walls to eliminate the source of the growing and constant problem, so it would come back time after time.

Id.

Practice Book 9-7 Prerequisites

Numerosity

The first prerequisite under Practice Book § 9-7 is that "the class is so numerous that joinder of all members is impracticable." "Impracticable does not mean impossible, but simply difficult or inconvenient." *Reese v. Arrow Financial Services, LLC*, 202 F.R.D. 83, 90 (D. Conn. 2001). Although there is no "magic number" beyond which this requirement is satisfied, *Town of New Hartford*, supra, 291 Conn. at 475, courts across the country, including the Second Circuit, have held that a proposed class with as few as 40 class members should raise a *presumption* that joinder is impracticable based on numbers alone. *See, e.g., Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993) (citing cases and treatise). *See also Newberg on Class Actions* (5th. ed.) §3.12 (Westlaw). When a proposed class is entirely low-income individuals, that is also a factor

favoring class certification. *Robidoux*, 987 F.3d at 936; *Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980); *McDonald v. Heckler*, 612 F.Supp. 293, 300 (D.Mass. 1985).

Counsel has already been retained by more than 250 members of the proposed class who between them occupied more than 100 different apartments at the complex. The exact size of the class, and the identity of the individuals within it, will be easily determined after certification using the rent roll maintained by the defendants during the class period. *See Grimes v. Housing Authority, supra*, 242 Conn. at 252 (“[T]he defendant had the essential information necessary to determine that the plaintiffs were potential class members—a list of the names and addresses of all tenants . . . including the plaintiffs.”). The class probably has more than 1,000 members, easily satisfying the “numerosity” requirement of Practice Book § 9-7.

Commonality

The second prerequisite of Practice Book § 9-7 is that “there are questions of law or fact common to the class.” This prerequisite, as the Supreme Court has noted, is “easily satisfied,” because the threshold for commonality is “not high”: it “is met when there is at least one issue whose resolution will affect all or a significant number of the putative class members.” *Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 323-324 (2005) (*Collins II*).

The named plaintiffs’ claims satisfy the commonality requirement because “each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.” *Central States Southeast and Southwest Areas Health and Welfare Fund v. Merck-Medco Managed Care, LLC*, 504 F.3d 229, 245 (2d Cir. 2007). The named plaintiffs’ and proposed class members’ claims all arise from the defendants’ mismanagement of the Church Street South housing complex, which is culminating in the relocation of every family living there (a few families are still awaiting relocation).

Although a particular named plaintiff or class member may have been injured to a greater or lesser extent, all allege substandard housing conditions that caused injuries while they lived in Church Street South, as well as injuries arising from relocation afterward. Common questions central to all of the claims are the defendants' control over management of the complex, the applicable standard of care, and whether the defendants' conduct was negligent, reckless, or constituted unfair trade practices, causing harm to the Church Street South families. There are many more than "one issue whose resolution will affect all or a significant number of the putative class members," *Collins II*, supra, 275 Conn. at 323-324. A closer examination of the common issues will accompany the "predominance" section of this memorandum. *Infra* pp. 18 to 39.

Typicality

The third prerequisite of Practice Book § 9-7 is that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." While numerosity and commonality "identify the characteristics that make representative litigation appropriate," typicality, like adequacy of representation, "focus[es] on the desired attributes of the class's representative." Newberg on Class Actions § 3:28 (5th ed.). The requirement is intended "to ensure that the interests of the class representative[s] are closely aligned with those of the class, so that by pursuing [their] own interests the class representative will also promote those of the class." *Id.* at § 3:32 (5th ed.).

Like commonality, typicality is not a demanding standard: "When it is alleged that the same unlawful conduct . . . affected both the named plaintiff and the class . . . the typicality requirement is usually met irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993). It is met "when

each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 34 (2003) (*Collins I*).

Each of the named plaintiffs, Personna Noble, Christina Foster, Yomaly Rivera, Luz DeJesus, and Rosa Rodriguez, lived at Church Street South during the class period and claims damages for the loss of rental value from their apartments, loss of property, physical injuries, emotional distress, relocation costs, punitive damages, and attorneys' fees, for themselves and for their children. Members of the proposed class were residents of Church Street South relocated (or soon to be relocated) from the complex due to the substandard housing conditions that persisted there. Nearly all are mothers with claims for themselves and for their children. All of the claims arise from the same course of events: the mismanagement and deterioration of Church Street South and then the eventual relocation of all the tenants. The named plaintiffs' claims are based on the same legal theories as the claims brought on behalf of the class, including negligence, recklessness, unfair trade practices, negligent infliction of emotional distress, breach of the warranty of habitability, and breach of lease. The named plaintiffs will advance the interests of the individual class members by proving the defendants' liability to themselves and the class members they seek to represent. The named plaintiffs have no conflicts of interest with the class because all of the named plaintiffs lived at Church Street South in uninhabitable conditions, were relocated from the complex, and suffered from the same categories of damages as class members.

While some of the facts related to individual claims differ, typicality remains. "[T]he [typicality] requirement may be satisfied even though varying fact patterns support the claims or defenses of individual class members or there is a disparity in the damages claimed by the

representative parties and the other class members.” 7A Fed. Prac. & Proc. Civ. § 1764 (3d ed.). The critical point is that the named plaintiffs’ claims rest on the same legal theories as the claims of the members of the class they seek to represent. The named plaintiffs will advance the interests of class they seek to represent by proving the defendants’ liability under each of these theories, and so the requirement of typicality is met.

Adequacy of Representation

The fourth and final prerequisite of Practice Book § 9-7 is that “the representative parties will fairly and adequately protect the interests of the class.” Adequacy “is met when the representatives: (1) have common interests with the unnamed class members; and (2) will vigorously prosecute the class action through qualified counsel.” *Collins II*, 275 Conn. at 326. In determining the adequacy of class representatives, the inquiry is largely limited to ruling out conflicts of interest between the representatives and the class. This is because:

A class representative has the responsibility of pursuing a resolution of the case for the benefit of the class. But the class representative is not required to be a legal expert, nor even a sophisticated person. All that is necessary is that the representative party have some minimal level of interest in the case, familiarity with the challenged practices and an ability to assist in decision-making in the conduct of the litigation.

Walsh v. Nat'l Safety Associates, Inc., 44 Conn. Supp. 569, 588, 659 A.2d 1096, 1105-1106 (Super. Ct. 1996) (Bartlett, J.), *aff'd*, 241 Conn. 278 (1997).

Here, all of the named plaintiffs and the class members they seek to represent share a common interest in proving the defendants’ liability on a class-wide basis. No conflicts of interest exist that should defeat class certification. “In order to defeat a motion for certification . . . the conflict must be fundamental.” *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 574 F.3d 29, 35 (2d Cir. 2009). *See also Charron v. Wiener*, 731 F.3d 241, 251 (2d Cir. 2013). Alleged conflicts must also not be speculative or hypothetical. *In re Olsten Corp. Sec. Litig.*, 3 F. Supp.

2d 286, 296 (E.D.N.Y. 1998), *opinion adhered to on reconsideration sub nom. In re Olsten Corp.*, 181 F.R.D. 218 (E.D.N.Y. 1998). (“The court finds that this alleged conflict is speculative and hypothetical, and should not prevent [appointment of class representatives].”). “For this reason, potential conflicts over the distribution of damages—which would arise only if the plaintiffs succeed in showing liability on a class-wide basis—will not bar a finding of adequacy at the class certification stage.” Newberg on Class Actions § 3:58 (5th ed.) (collecting cases).

Indeed, there appear to be no conflicts of interest between the class members: their claims do not conflict with but instead support the claims of fellow class members, and it is more efficient, to say the very least, for the members of the class to have the same counsel as each other and to try as much of the case as possible just once instead of many, many times.

Qualified Class Counsel

In determining the adequacy of class counsel, Practice Book § 9-9 requires a court to consider “[1] the work counsel has done in identifying or investigating potential claims in the action . . . [2] counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in the action . . . [3] counsel’s knowledge of the applicable law; and [4] the resources counsel will commit to representing the class.” § 9-9 (d)(1)(i)-(iv). Additionally, courts are permitted to consider “any other matter pertinent to counsel’s ability to represent the class fairly and adequately.” § 9-9 (d)(2)(i). Plaintiffs refer the Court to the attached affidavit of David N. Rosen, Exhibit U, which addresses these issues.

Practice Book 9-8 Requirements

Predominance

Practice Book § 9-8 requires that for an action to be maintained as a class action, “questions of law or fact common to the members of the class [must] predominate over any

questions affecting only individual members.” Although “[p]redominance is a stricter test than . . . commonality,” requiring class issues to “predominate over” issues relating to only individual members, *Walsh, supra*, 44 Conn. Supp. at 588, “predominance is applied in a pragmatic sense. When common questions represent a significant aspect of a case so that they can be resolved for all class members in a single suit, predominance exists.” *Id.* at 588-589 (emphasis added). *See also Motley v. Jaguar Land Rover N. Am., LLC*, No. X-03-CV-084057552-S, 2012 WL 5860477, at *6 (Conn. Super. Ct. Nov. 1, 2012) (Miller, J.).

The Supreme Court in *Collins II* set out the “three part inquiry” that courts use to determine predominance under Practice Book § 9-8:

First, the court should review the elements of the causes of action that the plaintiffs seek to assert on behalf of the putative class . . . *Second*, the court should determine whether generalized evidence could be offered to prove those elements on a class-wide basis or whether individualized proof will be needed to establish each class member's entitlement to monetary or injunctive relief . . . *Third*, the court should weigh the common issues that are subject to generalized proof against the issues requiring individualized proof in order to determine which predominate ... Only when common questions of law or fact will be the object of most of the efforts of the litigants and the court will the predominance test be satisfied.

Collins II, supra, 275 Conn. at 331-332 (emphasis added).

Significant aspects of each of the six counts in the named plaintiffs’ complaint can be resolved for all class members in a single suit and those issues will be the object of most of the efforts of the litigants and the Court.

Count One: Negligence

“In a negligence action, the plaintiff must meet all of the essential elements of the tort in order to prevail. These elements are: duty; breach of that duty; causation; and actual injury.”

LaFlamme v. Dallessio, 261 Conn. 247, 251 (2002). The named plaintiffs submit that the existence of a duty, the scope of that duty, breach, causation for property damage and relocation

injury claims, and “general causation” of physical injury and emotional distress claims, are all issues “subject to generalized proof,” *Collins II*, supra, and predominate over individualized issues that may remain for individual cases.

The existence of a duty is a class-wide issue. “Contained within the first element, duty, there are two distinct considerations. First, it is necessary to determine the existence of a duty, and then, if one is found, it is necessary to evaluate the scope of that duty.” *Considine v. City of Waterbury*, 279 Conn. 830, 858–59 (2006) (ellipses omitted). “The general rule regarding premises liability in the landlord-tenant context is that landlords owe a duty of reasonable care as to those parts of the property over which they have retained control.” *LaFlamme*, supra, 261 Conn. at 256 (internal quotation marks and citation omitted). As the expert reports of Mr. Klein, Mr. Darling, and Mr. Parry, and the statement of Alder Colon show, the named plaintiffs will prove that the hazardous defects of the Church Street South housing complex arose from faulty roofs, plumbing, windows, and other parts of the property under the defendants’ control. The party that had control over these parts of the property had a non-delegable duty to keep them reasonably safe. *See, e.g., Smith v. Greenwich*, 278 Conn. 428, 455-60 (2006).

The scope of the duty to keep the premises “reasonably safe,” *Smith*, supra, 278 Conn. at 456, is also a class-wide issue. This issue is simply the standard of care, *Considine*, 279 Conn. at 859-861. The standard of care here applies to the class as a whole: it is set by state and local building and housing codes, federal housing quality regulations, state statutes imposing duties on landlords, and the common law. In order to show that violations of these codes and statutes are a breach of the standard of care, the named plaintiffs will prove that they and the class they seek to represent are “within the class of persons protected by the statute[s],” and that their injuries are

“of the type which the statute was intended to prevent,” *Gore v. People's Sav. Bank*, 235 Conn. 360, 376 (1995).

Breach of duty is also a class-wide issue. First, with regard to the violation of applicable housing, and health and safety codes, the jury must “merely decide whether the relevant statute or regulation has been violated,” *Gore*, 235 Conn. at 376. The named plaintiffs will prove violations of local, state, and federal codes and regulations, violations that were documented by inspectors and observed by the named plaintiffs’ experts, that affected every unit in every building at Church Street South. Second, a defendant “may avoid liability upon proof of a valid excuse or justification.” *Gore*, 235 Conn. at 376-77. A defendant may, for example, “avoid liability by showing that he neither knows nor should know of the occasion for compliance,” *id.*, or “he is unable after reasonable diligence or care to comply,” *id.* n.16. Class-wide evidence will show that the defendants did, in fact, “know of the occasion for compliance” with local, state, and federal housing codes and that their mismanagement of the complex fell far short of “reasonable diligence or care to comply.”

The reports by plaintiff’s expert industrial hygienist, Mr. Klein, and expert engineer, Mr. Parry, show with particular clarity how class-wide evidence will prove the defendants’ liability. As Mr. Klein reported, [REDACTED]

[REDACTED]

[REDACTED] Ex. F. at 3. Mr. Klein’s review of the government inspection data corroborates the reports of the named plaintiffs and the class members they seek to represent, who claim that the defendants systematically allowed hazardous conditions like these to persist for years, exposing them to indoor dampness, water damage, excessive moisture, mildew, and mold. Mr. Parry’s report demonstrates how these systematic failures stem from a common course of conduct

affecting the entire class: failure to prevent leaks before they occur in an aging complex, allowing leaks to persist for months or even years without repair, and repairing leaks inadequately by failing to address the root of the problem and failing to dry areas that suffered from leaks, leaving moisture in the units.

Although there may be differences in the degree to which individual apartments fell below local, state, and federal standards of habitability or in the manner by which the defendants' conduct caused the violations, the defendants' "entire course of conduct and knowledge of its potential hazards is a common issue to the class, which courts have found to be sufficient [for class certification] even in cases where there are multiple possible sources of contamination." *Collins v. Olin Corp.*, 248 F.R.D. 95, 104 (D. Conn. 2008) (Droney, J.) (*Olin*). "[I]ndividual issues of causation do not preclude class certification." *Id.*

Moreover, many of the issues relating to causation are also susceptible to class-wide proof. For instance, damages arising from the relocation of tenants from their Church Street South apartments into hotels and relocation apartments all stem from a common cause: the defendants' plan to empty the complex and prepare it for demolition. The evidence will show that the defendants made a decision to relocate tenants from their Church Street South apartments and have admitted that the decision was the result of the conditions there.¹² The

¹² In September 2015, Northland authored an "Operational and Decommissioning Plan" that stated that 24 families had been relocated from Church Street South "due to potential health and safety risks resulting from water infiltration and deteriorated unit conditions," declared that all 22 buildings were "functionally obsolete," that "[a]ny renovation or rehabilitation . . . would be economically unfeasible [sic]," and concluded that "[t]he goal is to relocate 100% of the residents and demolish all structures on the premises . . . in as short a time frame as possible, ideally over the next 18 to 24 months." See *Church Street South New Haven, Connecticut Operational and Decommissioning Plan* (Sept. 15, 2015), attached as Exhibit M. The exhibits to the report have been omitted due to their length but they can be provided at the Court's request. All counsel have copies.

named plaintiffs can therefore satisfy the causation element by pointing to the defendants' decision.

Causation for personal injury claims arising from exposure to mold or moisture in apartments, while partly individualized, is also partly susceptible to class-wide proof. General causation, which would otherwise need to be proven in every individual case, can be proven on a class-wide basis. "General, or 'generic' causation has been defined by courts to mean whether the substance at issue had the capacity to cause the harm alleged, while 'individual causation' refers to whether a particular individual suffers from a particular ailment as a result of exposure to a substance." *In re Hanford Nuclear Reservation Litig.*, 292 F.3d 1124, 1133 (9th Cir. 2002); *see also generally* National Research Council, *Reference Manual on Scientific Evidence* (3d. ed. 2011) at 597-606 (explaining general causation). In this case, general causation for personal injury claims due to mold or moisture can be proven on a class-wide basis.

The reports of both Dr. Anwar and Dr. Redlich address general causation. Dr. Redlich summarized the extensive medical literature concerning general causation that - provided there is no class certification - would need to be reviewed and interpreted for each individual case:

There is an extensive medical literature documenting the adverse health effects of exposure to mold and dampness and inhabiting buildings with water intrusion problems. Multiple peer-reviewed published studies have shown that living in homes with mold, water damage, and/or indoor dampness significantly increases the risk of several medical conditions including asthma, upper respiratory infections, allergies, sinusitis, and asthma exacerbations (*Mendell, 2011; Jaakkola, 2013; Quansah, 2012; Park, 2004*). Mold exposure is also associated with reduced lung function in adults who do not have a history of asthma (*Hernberg, 2014*). The medical literature and epidemiology studies have also shown that housing instability and household exposures to mold, pests, water intrusion and structural damage are associated with a range of diseases and poorer health outcomes, including greater anxiety and depression (*Tilburg, 2017; Simon, 2017; Sandel, 2017; Sandel, 2018*). In addition, asthma, anxiety and depression are commonly linked interacting conditions (*Han, 2016*).

Redlich Report, Ex. I at 6.

Dr. Anwar’s report also summarizes literature concerning the negative health effects of mold and wet indoor environments, including the biological mechanisms through which mold, in particular, can cause irritation, allergic reactions, and disease. Ex. J. at 2-3. All of the literature referenced in both reports are class-wide evidence because the information about the health effects and conditions alleged would apply to each class member’s case. Additionally, the “markedly high,” Ex. I at 6, reported rates of asthma, other respiratory problems, sinus problems, skin problems, headaches, anxiety, depression, and emotional distress summarized in the questionnaires are also class-wide evidence because the high reported rates corroborate each individual class member’s case and are therefore relevant to determinations of causation in each case. As Dr. Redlich explains:

We routinely evaluate whether others with similar exposures also have similar health problems. For example, when a teacher with asthma is referred to assess whether work at a specific school caused his or her asthma, it is important to assess possible causative exposures at the school and any other contributing factors. In addition, knowing, for example, that 30 out of 100 other teachers also reported asthma related to the same school would be important additional information to help assess causality. Similarly *in assessing causality in individual Church Street South residents, it is important to evaluate such individuals in the context of what is known about the conditions and exposures in the Church Street South complex and also the other Church Street South residents*. It should also be noted that it is very common that cases of asthma caused by environmental and work exposures go unrecognized and undocumented by the patient’s regular medical providers, even when others in the same environment have the same problem, as affected individuals commonly are evaluated by different providers, and clinically asthma triggered by an exposure such as mold is indistinguishable from asthma triggered by other exposures or factors.

Id. at 7 (emphasis added). The relevance of this class-wide information to the determination of general causation is another reason for class certification.¹³

Once the named plaintiffs establish general causation on behalf of the class in a class-wide trial, “individual” or “specific” proximate causation can be established (or negated) for

¹³ That is, it is relevant to each individual claim that the class member lived in what Alder Colon reports, *see* Exhibit T, was known as Asthma Central.

class members case by case. *See, e.g., In re Hanford, supra*, 292 F.3d at 1133; *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1200 (6th Cir. 1988) (“It was first established that [the defendant] was responsible . . . and . . . *capable* of producing injuries of the types allegedly suffered by the plaintiffs. . . . This enabled the court to determine a kind of generic causation This still left the matter of *individual* proximate cause to be determined.”) (emphases added); *Bates v. Tenco Services, Inc.*, 132 F.R.D. 160, 163–64 (D.S.C.1990) (“Individual offers of proof of proximate cause and damages for each plaintiff will become an inevitable necessity; however, these individual questions of proof will arise whether the suit proceeds individually or as a class action”); *cf. Olin, supra*, 248 F.R.D. at 104 (“[I]ndividual issues of causation do not preclude class certification.”).

Count Two: Recklessness

Class certification for the named plaintiffs’ common law recklessness claims is proper because the defendants’ “state of consciousness with reference to the consequences,” of their course of conduct, *Craig v. Driscoll*, 262 Conn. 312, 342 (2003), is also a class-wide issue. The evidence will show “numerous” violations of local, state, and federal building and housing codes and regulations, “precautions that the defendant reasonably could have taken to prevent” repeated violations, and will show that the risk of injury “was sufficiently great such that the defendant either knew or should have known that its failure to take those precautions would expose” the named plaintiffs “to a great risk of harm,” *Doe v. Boy Scouts of Am. Corp.*, 323 Conn. 303, 331 (2016). These are the elements of a recklessness claim. *Id.*

Northland has a long history of repeated code violations at Church Street South. In May 2009, 60 out of 64 units failed inspections conducted by the City of New Haven’s Livable Cities Initiative (LCI); when 15 units were re-inspected, all 15 failed the follow-up. Failures included

“deteriorated masonry block walls throughout the complex caused by roof deferred maintenance and other components like missing and leaking downspouts.” Kelly Murphy, *Church Street South*, Memorandum to Mayor Destefano (Sep. 16, 2009), attached as Exhibit N, at 1. As a result, just a year into owning the property, Northland had already accumulated \$45,000 in fines from New Haven Housing Code violations. As one city official wrote to then-Mayor Destefano, “it seems issuing a fine was the only way we were able to get Northland’s attention to address these extensive violations.” Ex. N at 2. The report also noted that Northland was “not making any investment in vacant units to bring them back online . . . despite a 300 family waiting list at CSS,” at least until they were cited by the U.S. Department of Housing and Urban Development (HUD) for failing to do so, *id.*

In January 2011, following a carbon monoxide leak that forced the temporary evacuation of an entire 14-unit building, the City of New Haven inspected 143 apartments, covering all 22 buildings, and found that 103 of them had a life-threatening defective furnace exhaust, the same problem that required the evacuation. Northland’s plan when confronted with these violations was “simply installing CO detectors and carrying out random testing.” Calling the Northland plan “unacceptable,” the City ordered repairs at all of the units affected, and demanded reimbursement for the costs that the City incurred in evacuating residents and providing fire watches and police services to address the problem themselves.¹⁴

In January 2013, a HUD inspection of 24 apartments found 12 systemic problems and 11 “life-threatening” health and safety violations, resulting in a failing score for the complex as a whole. Shortly thereafter, HUD forwarded a list of additional housing code violations that had

¹⁴ Andrew J. Rizzo, City of New Haven Building Official, Letter to Mr. Larry Gottesdiener, Chairman of the Board, Northland Investment Corporation, Jan. 20, 2011, attached as Exhibit O.

been discovered by the City of New Haven in 59 additional apartments. These violations led a HUD representative to tell Northland that “[t]he Departmental Enforcement Center will soon be sending a notice of default . . . regarding this project.”¹⁵ As reported by Robert Klein, many of these violations were still present during the complex-wide inspection of Church Street South conducted by HUD two years later in 2015. Ex. F. at 4.

Northland’s pattern and practice of concealing or failing to remedy health and safety hazards will be relevant to every individual plaintiff’s claim of common law recklessness and unfair trade practices and is more efficiently litigated on a class-wide basis. *Berry v. Loiseau*, 223 Conn. 786, 804 (1992) (“Evidence of other misconduct, although not ordinarily admissible to prove the bad character or criminal tendencies of the accused, may be allowed for the purpose of proving many different things, such as intent, identity, malice, motive or a system of criminal activity”) (citing and quoting *Russell v. Dean Witter Reynolds, Inc.*, 200 Conn. 172, 192 (1986)); Conn. Code Evid. § 4-5(b) (“Evidence of other crimes, wrongs or acts of a person is admissible . . . to prove intent, identity, malice, motive, common plan or scheme, absence of mistake or accident, knowledge, . . .”).

Northland’s knowledge of the harm to health caused by water damage, leaks, mold, and damp indoor environments, also relevant to the recklessness claim, will likewise be susceptible to class-wide proof. When preparing reports, presumably for submission to HUD seeking funding for redevelopment, Northland admitted “[d]isproportionately high and adverse health effects with ongoing residency” at Church Street South, caused by “[p]roliferation of mold and

¹⁵ Suzanne C. Piacentini, Director, Multifamily Program Center (HUD), Letter to Steven Rosenthal & William Thompson Re: Church Street South Apts., March 26, 2013, attached as Exhibit P.

moisture in dwelling units due to water infiltration resulting from deteriorated roofs, exterior wall structures, plumbing and drainage systems.”¹⁶

Count Three: Unfair Trade Practices

CUTPA provides that “[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Conn. Gen. Stat. § 42-110b(a). In order to enforce this prohibition, CUTPA provides a private cause of action to “[a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment of a [prohibited] method, act or practice.” *Abrahams v. Young & Rubicam, Inc.*, 240 Conn. 300, 306 (1997). The defendants’ participation in trade or commerce, their unfair practices in renting substandard housing, and the injury to tenant-consumers as a result, are all class-wide issues susceptible to generalized proof that predominate over individual issues in this action.

CUTPA was intended to benefit tenants of rental housing. Conn. Gen. Stat. Ann. § 42-110a (4) (“‘Trade’ and ‘commerce’ means . . . the sale or *rent or lease* . . . of . . . any property, tangible or intangible, *real*, personal or mixed,”) (emphases added). In fact CUTPA was amended in 1978 to make clear that its provisions should be read to cover the lease and rental of real property.¹⁷

¹⁶ “Design Deficiencies at Church Street South Housing Complex,” produced by Northland as an attachment to an email from Northland Senior Vice President Peter Standish, both of which are attached as Exhibit Q.

¹⁷ See 21 H. R. Proc., Pt. 10, 1978 Sess., p. 3980 (“The need for clarification resulted from a Superior Court decision which held that tenants could not utilize the remedies under the Unfair Trade Practices Act against landlords for unfair trade practices.”) (remarks of Rep. Frankel); 21 S. Proc., Pt. 5, 1978 Sess., p. 1841. (“The need for this bill results from a Superior Court decision which found the tenants could not utilize the Unfair Trade Practices Act against their landlord to seek redress for alleged unfair practices.”) (remarks of Sen. Cutillo).

In one of the first Connecticut Supreme Court cases construing the statute, the “continued collection of rents despite the uninhabitability of . . . apartments” was held to be an “unfair or deceptive act[] or practice[]” within the purview of CUTPA. *Conaway*, supra, 191 Conn. at 488.¹⁸ That is because collecting rent for uninhabitable apartments, even when “not specifically prohibited” by state statutes regarding landlord responsibilities, “unquestionably offend[s] the public policy as embodied by these statutes, of insuring minimum standards of housing safety and habitability.” *Id.* at 492-493.

The named plaintiffs bring this action not only to remedy “the diminution of the rental value” of their apartments “occasioned by the defendants’ wrongful conduct,” *Conaway*, 191 Conn. at 495, but also to collect damages caused by personal injuries and illnesses, emotional distress, relocation costs, and property losses. Since *Conaway*, courts have held that damages for the types of injuries caused here by violations of landlord-tenant statutes are recoverable under CUTPA. One Superior Court explained how a landlord’s failures to comply with housing health and safety codes are “unfair trade practices” under CUTPA:

The violation complained of here is the absence of a gutter in an apartment house resulting in a dangerous condition. While this may indeed be an act of negligence (and a violation of the Landlord and Tenant Act to boot), it also implicates the entrepreneurial aspect of the landlord's business. Renting an apartment building

¹⁸ A treatise summarizes the *Conaway* litigation:

In an important early decision, *Conaway v. Prestia*, . . . the defendant landlords were alleged to have collected rents for apartments that did not conform to housing code standards and for which no certificate of occupancy had been obtained. . . . [T]he court . . . concluded that the landlords had violated CUTPA because their actions unquestionably offended the public policy, as embodied by [landlord-tenant] statutes, of insuring minimum standards of housing safety and habitability. The court then remanded the case to the trial court to determine precisely how much damage each class member had suffered. The housing legislation, although not expressly referencing CUTPA, established the standard of conduct from which to evaluate “unfairness” under CUTPA.

Langer, et al., 12 Conn. Prac., Unfair Trade Practices § 2.2 (Oct. 2017).

without adequate gutters may be financially advantageous to the landlord and increase his margin of profit. Conforming to the requirements of the Landlord and Tenant Act costs money. Public policy nevertheless requires landlord to expend such money. When they do not, CUTPA is properly invoked.

This reasoning does not mean that every slip and fall by a tenant can be turned into a CUTPA violation. If a landlord negligently drops a banana peel on the steps and a tenant falls as a result, the landlord may well be liable in negligence, but there would be no CUTPA violation. The failure to make a structural repair required by the state habitability statutes is, however, different. . . . In that case, like this, the person sued has enhanced his economic condition by failing to make the expenditures that public policy demands.

Simms v. Candela, 45 Conn. Supp. 267, 273–74 (Super. Ct. 1998) (Blue, J.) (citations omitted).¹⁹

The named plaintiffs also seek punitive damages under CUTPA because the uninhabitable conditions at Church Street South were the result of the defendants’ reckless disregard for their health and safety and the health and safety of members of the proposed class. In fact, the named plaintiffs claim on their own behalf and on behalf of the class that the conditions at Church Street South were the result of a plan of demolition-by-neglect.²⁰

¹⁹ See also *Parris v. Pappas*, 844 F. Supp. 2d 271, 284–85 (D. Conn. 2012) (Fitzsimmons, M.J.) (Plaintiff “entitled to recover expenses incurred due to . . . septic system failures” under CUTPA); *Beck v. New Samaritan Family Hous. of Waterbury, Inc.*, No. CV-03-0181797-S, 2005 WL 1670810, at *3 (minor children of adult rental tenants have consumer relationship with their landlord under CUTPA); *Caleb Vill. Heights Found., Inc. v. Barclay*, No. 063265, 2001 WL 56434, at *1, *5 (Conn. Super. Ct. 2001) (Foley, J.) (denying motion to strike CUTPA claim for lost wages, lost property, and a child’s “repeated doctor’s visits for numerous health problems associated with her exposure to raw sewage” due to landlord’s failure to maintain property in a safe and habitable condition in violation of state statutes); Langer, et al., 12 *Conn. Prac., Unfair Trade Practices* § 4.7 (Oct. 2017) (“Injuries resulting from defects in the property that a landlord has a duty to avoid have resulted in recovery under CUTPA.”).

²⁰ The term “demolition-by-neglect” was coined in the historic preservation context “to describe a situation in which a property owner intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair.” National Trust for Historic Preservation, *Preservation Law Educational Materials...Demolition by Neglect* (Washington, D.C.: National Trust for Historic Preservation, 2009), available at <https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=ccd565f7-27f1-fcd7-f3a9-351b5a7b645b&forceDialog=1> (last acc. Feb. 13, 2018). Here the motivation is Northland’s continuing desire to demolish Church Street South to build something more profitable in its place, although it is also true that Church Street South, designed

In this case, Northland's demolition-by-neglect allowed the company to escape its obligation to rent the complex to low-income families, and to clear the families out of the buildings and begin a process of redevelopment that it had failed to achieve by other means. Northland's intent to redevelop the project rather than renovate and rehabilitate the buildings for the families living there will also be a class-wide issue.²¹

Finally, the amount of punitive damages would also most equitably and efficiently be determined on a class-wide basis, as explained further *infra* pp. 37 to 38.

Count Four: Negligent Infliction of Emotional Distress

To recover for negligent infliction of emotional distress, a plaintiff must prove that “(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress.” *Diaz v. Griffin Health Servs. Corp.*, No. X10CV156029965S, 2017 WL 960792, at *4 (Conn. Super. Ct. Jan. 31, 2017) (Lager, J.) (quoting *Carrol v. Allstate Ins. Co.*,

by the eminent architect Charles Moore and built in 1969, would be eligible in 2019 for placement on the National and State Register of Historic Places.

²¹ In May 2011, Northland entered into a “Memorandum of Understanding” (MOU) with the City of New Haven that provided “a development fee to Northland . . . up to the maximum amount allowable under a public or tax credit financing agreement” In 2012 the plans faltered over disagreements about the amount of low-income housing to be provided at the new development. *See* MOU and Letter from Jimmy Miller and Erik Johnson, City of New Haven (Jan. 13, 2012), attached as Exhibit R.

Defendant Lawrence Gottesdiener has been clear that demolition was Northland's plan all along. When the relocation of families from the complex was beginning in 2015, he explained to a local newspaper, “I bought [Church Street South] to build something better there.” Paul Bass, *Church Street South Endgame: Raze, Rebuild*, New Haven Independent, Aug. 21, 2015, available at http://www.newhavenindependent.org/index.php/archives/entry/church_street_south_endgame_razerebuild/ (last acc. Feb. 13, 2018).

262 Conn. 433, 444 (2003)).²² Whether the defendants' conduct created an "unreasonable risk" of causing emotional distress and whether the emotional distress was foreseeable are class-wide issues.

The defendants may counter that "an inquiry into each plaintiff's mental health and other potential causes of emotional distress will need to be conducted in order to determine if [the defendants'] actions are indeed the proximate cause," *Olin*, 248 F.R.D. at 104. However, "this inquiry can easily be done in conjunction with the inquiry into the actual damages sustained by each plaintiff. Furthermore, the remaining elements of an intentional infliction of emotional distress claim, such as the intent of [the defendants] and whether [the defendants] knew [their] conduct was likely to cause distress, and whether [the defendants'] conduct was extreme and outrageous, can be made on a class-wide basis." *Id.*

Count Five: Breach of the Implied Warranty of Habitability

Significant aspects of the named plaintiffs' claims for breach of the implied warranty of habitability are "subject to generalized proof," *Collins II*, that predominate over individualized issues. "There is a fine, albeit distinguishable, line between a cause of action based on negligence and one based on breach of an implied warranty [of habitability]" *Lovick v. Nigro*, No. LPL-CV-94-0542473-S, 1997 WL 112806, at *5 (Conn. Super. Ct.) (Lager, J.) (lead-based hazards case).²³ One difference is that a claim for breach of the implied warranty of habitability sounds

²² "Since 1941 Connecticut has permitted recovery for negligence which proximately causes foreseeable fright or shock without evidence of a contemporaneous physical injury. . . . [E]motional distress can be an independent present injury without an attendant physical injury or physical impact if the distress falls within the scope of the risk created by the negligent conduct." *Diaz*, 2017 WL 960792 at *8, n.4.

²³ Although there is no general implied warranty of habitability, the warranty does "apply to defects which are the result of faulty design or disrepair and which existed at the beginning of the tenancy, were not discoverable by the tenant on reasonable inspection, and were known, either actually or constructively, to the landlord." *Id.* at *6. The named plaintiffs will show that

in contract, rather than tort. *Id.* at *5, *see also id.* at *8 n.3 (“It has been recognized . . . that the defective performance of a contractual undertaking may give rise to an action both in tort and contract.”). That difference is significant here because the leases of the named plaintiffs all contain a “legal addendum” signed by a representative of the landlord that provides:

In the event that the Landlord should take steps such as the issuance of a lease violation notice . . . or commence a suit for the possession of the premises, for the recovery of a sum due under this Lease . . . or for any other relief against Tenant . . . then as additional items of damage all costs and expenses, including reasonable attorney’s fees, uncured may be awarded to the prevailing party

See Exhibit S (legal addenda signed by the named plaintiffs). An initial review of “tenant files” produced thus far to counsel strongly suggests that *all* tenants were required to sign this “legal addendum” each year they resided at Church Street South. This fact is relevant because Connecticut General Statutes § 42-150bb states:

Attorney’s fees in action based on consumer contract or lease. Whenever any contract or lease entered into on or after October 1, 1979, to which a consumer is a party, provides for the attorney’s fee of the commercial party to be paid by the consumer, an attorney’s fee shall be awarded as a matter of law to the consumer who successfully prosecutes or defends an action or a counterclaim based upon the contract or lease. . . . For the purposes of this section, “commercial party” means the seller, creditor, lessor or assignee of any of them, and “consumer” means the buyer, debtor, lessee or personal representative of any of them. The provisions of this section shall apply only to contracts or leases in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.

Because the leases signed by the named plaintiffs and class members all provide “for the attorney’s fee of the commercial party [the landlord] to be paid by the consumer [the tenant],” the named plaintiffs and class members will be entitled to attorneys’ fees as a matter of law should they successfully prosecute their claims based on the leases. The amount of attorneys’

the defendants’ neglect of Church Street South arose from defects that were the result of faulty design and disrepair to elements over which the tenants had no control (such as roofs, walls, ceilings, and plumbing), issues that were long known to the landlord.

fees is a paradigmatic class-wide issue because allocating attorneys' time and fees among class members would be arbitrary and artificial when the great bulk of work would be performed on behalf of the class as a whole.

Count Six: Breach of Lease/Constructive Eviction

In addition to breach of the implied warranty of habitability, named plaintiffs, for themselves and all those similarly situated, also claim breach of their identical leases with the defendants. The rental agreements signed by the named plaintiffs - and, based on an initial review of tenant files produced to proposed class counsel, all of the class members as well - obligate the landlord to "make necessary repairs with reasonable promptness," to "maintain all equipment and appliances in safe and working order," and to lease the unit to the tenant for the entirety of the lease term.

The breach of lease claims have three parts. First, the named plaintiffs will show, through the same generalized evidence used for counts one through five, the defendants' failure on a class-wide basis to "make necessary repairs with reasonable promptness" and to "maintain all equipment and appliances in safe and working order." Second, the named plaintiffs will show that the relocation of residents from Church Street South - a complex-wide act that will soon be completed - was a breach of the landlord's duty to lease units to the tenants for the entirety of the lease term.

Third, named plaintiffs will also prove breach of lease on a class-wide basis on a constructive eviction theory because all the tenants at Church Street South have been or will be relocated as a result of the uninhabitable conditions there. "In addition to proving that the premises are untenantable, a party pleading constructive eviction must prove that (1) the problem was caused by the landlord, (2) the tenant vacated the premises because of the problem, and (3)

the tenant did not vacate until after giving the landlord reasonable time to correct the problem.”
Welsch v. Groat, 95 Conn.App. 658 (2006) (citations and internal quotation marks omitted).
Proof of “failure to make necessary repairs in regard to . . . water damage and the presence of mold and mildew,” has been held to constitute constructive eviction. *Id.* at 661-663. As noted above, the named plaintiffs, for themselves and for the class, allege that the defendants failed to make necessary repairs in every building at Church Street South, harming every apartment, and leading to the displacement of residents in every apartment.

Additionally, because count six, like count five, is based on leases subject to a provision that would obligate consumers to pay a commercial party’s attorneys’ fees, attorneys’ fees pursuant to Conn. Gen. Stat. § 42-150bb are an additional class-wide issue related to this count.

Damages

It is well-established that the presence of individualized damages does not defeat class certification. *Olin, supra*, 248 F.R.D. at 105 (“[C]ourts have repeatedly stated that difference in the amount and recoverability of damages do not defeat predominance.”) (citing *Mejdreck v. Lockformer Co.*, 2002 WL 1838141 (N.D.Ill. 2002), *aff’d*, 319 F.3d 910, 911-12 (7th Cir. 2003) (“it is very common for Rule 23(b) class actions to involve differing damage awards for different class members”)); *Collins II, supra*, 275 Conn. at 330 (“[N]umerous [federal] courts have recognized . . . that the presence of individualized damages issues does not prevent a finding that the common issues in the case predominate.”).

However, even some of the damages-related issues in this case are susceptible to class-wide proof. For instance, in *Conaway v. Prestia, supra*, one of the first cases establishing CUTPA liability for substandard housing conditions, “rent received minus reasonable use and occupancy value” was approved as “a permissible method of determining actual damages” to

individual class members, 191 Conn. 495 n.12. Reasonable use and occupancy value is certainly susceptible to classwide proof, though there may be individual variations, and once it has been established, awarding damages to compensate for the unfairness of the defendants' conduct in leasing the apartments would require simply subtracting that number from the amount of rent received by the defendants for each tenant. (The rent received by the defendants can, of course, be established through the defendants' records.)²⁴

Assessment of damages to property, chiefly household items, caused by the unlawful conditions of the apartments or lost in the process of relocation caused by the defendants' unlawful conduct can also be facilitated with a group process, for example by establishing presumptive values for various items.

An additional category of damages distinct from emotional distress and physical injury or illness is the "discomfort and annoyance," Restatement (Second) of Torts § 929(1)(c) (1979), inflicted on each family that was relocated to an area hotel- often for months at a time and in at least one case more than a year. As courts have noted, "temporary housing may often be a poor substitute for living in one's home The available options may lack the space and facilities to which one is accustomed, and may also be located farther from work, school, and shopping." *Mayer v. Chicago Mechanical Services, Inc.*, 925 N.E.2d 317, 322-23 (Ill. App. 4 Dist. 2010). In this case, the great majority of residents of Church Street South were relocated to one (or in some cases one after another) of five hotels: the Clarion Hotel & Suites in Hamden, the Econo Lodge in West Haven, the La Quinta Inn & Suites in New Haven, the Quality Inn in East Haven, and the Premiere Hotel & Suites (aka New Haven Village Suites) in New Haven. Other than the Premiere, none of the hotels to which residents were relocated had adequate facilities for families

²⁴ Because each of the tenants' rent was subsidized by HUD under Section 8, the effect of the subsidy on damages is also an issue common to the class.

to prepare their own meals, and in nearly every case an entire family -- up to five or even six family members -- was confined to a single hotel room. Determining the proper method of compensation for the “discomfort and annoyance” caused by Church Street South’s relocation is another matter susceptible to class-wide proof. The amount of damages for the class members who were moved to hotels may also be subject to at least presumptive determination based on an appropriate schedule.

Finally, punitive damages, at least with respect to CUTPA, may best be resolved on a class-wide basis. “Unlike punitive damages under Connecticut common law, punitive damages under CUTPA are focused on deterrence, rather than mere compensation.” *Bridgeport Harbour Place I, LLC v. Ganim*, 131 Conn. App. 99, 140 (2011). “[T]he purpose of awarding punitive damages under CUTPA is to deter future unfair trade practices.” *Aldin Assocs. Ltd. P’ship v. Hess Corp.*, 176 Conn. App. 461, 492 (2017).

If the named plaintiffs prove that defendants are liable under CUTPA and punitive damages should be imposed, the amount of punitive damages will be based, at least in part, on the defendants’ financial standing, an element that is identical for each class member’s claim.. *See Lenz v. CNA Assur. Co.*, 42 Conn. Supp. 514 (Super. Ct. 1993) (Flynn, J.) (“An amount that might deter a poor widow could seem trifling and leave undeterred a corporate entity with large financial resources. The issue then of the defendant's financial circumstances is relevant and material to the deterrent non-common law punitive damages that the plaintiff would be required to prove under the CUTPA count.”). Other facts relevant to the amount of punitive damages, such as the financial gains the defendants stand to receive from redeveloping the complex, should also be proven by common evidence.

Courts have certified punitive damages classes in cases such as this, “when the focus is on the defendant's conduct,” *Palmer v. Combined Ins. Co. of Am.*, 217 F.R.D. 430, 438 (N.D. Ill. 2003); *see also Tawney v. Columbia Natural Resources, LLC*, 2007 WL 5539870 (W.Va.Cir.Ct.) (“Trying punitive damages issues for the entire class actually protects Defendants from inordinate punitive damage awards and assures a fair award to all persons harmed.”); *Iorio v. Allianz Life Ins. Co. of N. Am.*, 2009 WL 3415703, at *5 (S.D. Cal. Oct. 21, 2009) (“[P]unitive damages will be awarded based on the injury inflicted upon all class members, not individual class members . . . [and the] [p]unitive damages award will be based largely on the misconduct of the Defendant”); *E.E.O.C. v. Dial Corp.*, 259 F. Supp. 2d 710, 712 (N.D. Ill. 2003) (“No jury deciding compensatory damages of an individual or small group of individuals can have the same insight on what will be needed to deter the pattern or practice . . .”).

Common Defenses

Common issues can also predominate when a defendant mounts defenses that would apply to the class as a whole. *See generally Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 568 U.S. 455 (2013); *Marr v. WMX Techs., Inc.*, 244 Conn. 676, 681 (1998) (“The question [whether the complaint could be dismissed for failure to state a claim] is an additional reason to certify a class....”) (citations and internal quotation marks omitted). Some examples are the potential defenses related to CUTPA liability. Although none of the defendants has yet answered the Complaint, the Court can take judicial notice of Northland Investment Corporation’s defenses in *Gonzalez v. Church Street New Haven LLC*, NNH-CV-14-6050201-S (Conn. Super. Ct. 2016), an individual matter asserting CUTPA liability on the basis of alleged mismanagement of the Church Street South complex. *See Conn. Code of Evidence*, §2-2 (Commentary) (“[T]he court may take judicial notice of the existence, content and legal effect of

a court file, or of a specific entry in a court file if that specific entry is brought to the attention of the court.”). In *Gonzalez*, Northland Investment Corporation moved for summary judgment on two grounds. First, it claimed that it “did not own, possess, control, maintain, and/or manage the property that has been referred to as the Station Court apartment complex.”²⁵ See DE ##210 & 211 (12/28/2015), *motion denied at* DE #210.10 (4/4/2016). Resolution of this defense would of course be a class-wide matter because if Northland did not own, possess, control, maintain, and/or manage Church Street South, it has no liability to any of the class members.

Second, after that motion was denied, Northland Investment Corporation and Church Street New Haven LLC, co-defendants here, moved for summary judgment again, also on grounds that would apply here to the entire class. The defendants argued that they are “exempt from CUTPA scrutiny, as their leasing of low-income residences is specifically authorized and regulated by the United States, acting through the Department of Housing and Urban Development.” See DE ## 245 & 246 (5/6/2016), *motion denied at* DE #245.10 (10/3/2016). Resolution of this defense, too, would be a class-wide matter because it potentially absolves the defendants of all CUTPA liability. The defendants may well make these arguments in this case, and because both defenses would allege a purported “fatal similarity,” *Amgen*, 568 U.S. at 470, between the named plaintiffs’ claims and the claims of the class they seek to represent, they are additional examples of “common question[s] of law,” *Marr*, 244 Conn. at 681, that support class certification.

Superiority

Practice Book § 9-8 requires, before certification of a class action for damages, a determination “that a class action is superior to other available methods for the fair and efficient

²⁵ Station Court is part of Church Street South.

adjudication of the controversy.” “If the predominance criterion is satisfied, courts generally will find that the class action is a superior mechanism even if it presents management difficulties.” *Neighborhood Builders, Inc. v. Town of Madison*, 294 Conn. 651, 671 (2010) (citing *Collins II*).

Class certification is superior to all other available methods for the fair and efficient adjudication of this case. Individual suits would undoubtedly require a massive amount of wasted resources litigating identical claims and issues, including multiple filings of essentially the same pleadings, motions, notices, orders, discovery materials, and use of essentially the same exhibits and witnesses over and over again.

Conclusion

For these reasons, the Court should certify this action as a class action.

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing was emailed, return receipt requested on

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